IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SECOND DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.17488 of 1999

Between:

N.Nageshwar Rao, S/o.N.V.V.Raju,
R/o. 18-92/2, Road No.6, Hanumanpet,
Malkajgiri, Hyderabad 47.

..... PETITIONER

AND

1 National Seeds Corporation Limited,

Rep. by its Regional Manager,
17-11 Tukaram Gate, Lalaguda,
Secunderabad
2 National Seeds Corporation Limited,
Beej Bhavan, Pusa Complex,
New Delhi: 110 012.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus (1) declaring the impugned proceedings Office Order No.16 dated 14.6.1999 as illegal and without jurisdiction and consequently direct the respondents herein to release the gratuity and encashment of leave consequent on the retirement of service on attaining the age of superannuation on 31.10.1997 without any deductions to the petitioner; (2) to direct the respondents herein to pay the full pay and allowances during the period of suspension duly deducting the subsistence allowance already withdrawn by the petitioner and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case

Counsel for the Petitioner: Mr. G.VIDYASAGAR

Counsel for the Respondents: Mr. K.ANANTHA RAO

The Court made the following :

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.17488 of 1999

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ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the Proceedings in Office Order No.16, dated 14-6-1999 as arbitrary and illegal and consequently to direct the respondents to release the gratuity and encashment of leave to the petitioner consequent on his retirement from service on attaining the age of superannuation on 31-10-1997 without any deduction and also to direct the respondents to pay the full pay and allowances during the period of suspension duly deducting the subsistence allowance.

The only ground on which the impugned Proceedings is sought to be challenged is lack of power of the respondents in issuing the said Proceedings. According to the learned counsel for the petitioner, the Service Rules governing the service conditions of the petitioner do not enable the respondents from continuing the disciplinary proceedings beyond the date of his retirement. Learned counsel for the respondent-Corporation also conceded that there is no provision enabling the respondents from continuing the departmental proceedings after retirement of an employee. But, however, the learned counsel contended that simply because there is no provision for continuing the disciplinary proceedings beyond the date of retirement in the Service Rules of the Corporation, that does not mean that the employee can involve in any misconduct just before his retirement and get away.

The learned counsel for the petitioner submitted that the issue raised in this Writ Petition is squarely covered by the decision of the Apex Court in **BHAGIRATHI JENA v. BOARD OF DIRECTORS, O.S.F.C. & OTHERS** and drawn attention of paragraph 6,7 and 9, which read as under:

"6. It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of departmental enquiry after superannuation.

7. In view of the absence of such provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30-6-95, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

9. The question has also been raised in the appeal in regard to the payment of arrears of salary and other allowances payable to the appellant during the period he was kept under suspension and up to the date of superannuation. Inasmuch as the enquiry had lapsed, it is, in our opinion, obvious that the appellant would have to get the balance of the emoluments payable to him after deducting the suspension allowance that was paid to him during the abovesaid period."

In view of the ratio laid down in the said decision, I am of the opinion that once the petitioner retired from service, there was no authority vested in the respondents for continuing the departmental proceedings even for the purpose of imposing any punishment. Therefore, the impugned proceedings are liable to be set aside and accordingly set aside.

In the result, the Writ Petition is allowed. The respondents are directed to pay all the retiral benefits including the gratuity to the petitioner, within a period of two months from the date of receipt of a copy of this order. No order as to costs.

02-8-2005

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